

## REMARKS

### **I. INTRODUCTION**

Claims 38-40 have been canceled. Claims 1-23, 30, 31, 36 and 37 have been previously canceled. Thus, claims 24-29 and 32-35 remain pending in the present application. No new matter has been added. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable. It is noted that the Examiner rejected claims 28-40. However, as mentioned, claims 30, 31, 36, and 37 were previously cancelled.

### **II. THE 35 U.S.C. § 102(b) REJECTION SHOULD BE WITHDRAWN**

The Examiner has rejected claims 24-29 and 32-35 under 35 U.S.C. § 102(a) as anticipated by U.S. Patent No. 5,329,531 to Diepstraten et al. (hereinafter “Diepstraten”). (See 11/28/08 Office Action, p. 2).

Diepstraten relates to a method of accessing a communication medium for isochronous and asynchronous communication traffic by sharing the same medium and the same transceivers of a plurality of communication stations that communicate by way of a base station. The base station controls the communication between communication stations and generates timing periods in which isochronous traffic is sent to the stations with a higher priority than any asynchronous traffic pending at the beginning of each timing period. (See Diepstraten, abstract). The transmissions of Diepstraten are determined based initially upon whether a station is busy and subsequently on a timer. (See Id., col. 4, ll. 37-46, 50-53).

The Examiner asserts that Diepstraten discloses “prioritiz[ing] said communications packets for transmission based on” “the total number of packets transmitted to each mobile unit” and “the order in which packets were received by the access point,” as recited in claim 24. The Examiner generally recites to the entire Summary of the Invention of Diepstraten. (See 11/28/08

Office Action, p. 2, citing Diepstraten, col. 2, l. 15 - col. 3, l. 37). The Examiner further cites to another portion of Diepstraten that purportedly anticipates the above recitation of claim 24. (See 11/28/08 Office Action, p. 2, citing Diepstraten, col. 6, ll. 60-65). It is respectfully submitted that, in its entirety, Diepstraten does not perform a prioritization on either of these bases.

It is respectfully submitted that Diepstraten does not necessarily perform any prioritization when pertaining to transmissions to different stations *from* the base station. The only prioritization performed in Diepstraten is differentiating between isochronous and asynchronous transmissions, in which isochronous transmissions are given priority. The prioritization in which the Examiner refers is for transmissions from the station *to* the base station. Specifically, the Examiner appears to correspond the UP packets of Diepstraten with the transmissions in claim 24. However, these transmissions are opposite in direction. Accordingly, it is respectfully submitted that this correspondence is misplaced.

Furthermore, Diepstraten does not include any disclosure regarding “the order in which packets were received by the access point,” as recited in claim 24. In fact, because of the timing windows in which the base station is permitted to transmit to the stations, such an order would run contrary to the teachings of Diepstraten. That is, upon receiving packets at the base station, the packets are prioritized based upon the isochronous and asynchronous types. Subsequently, when the timing window is triggered, the packets are transmitted. Because isochronous packets are given absolute priority over asynchronous packets, if a receiving order is utilized, there may be an opportunity where the asynchronous packets are transmitted prior to the isochronous packets.

Thus, it is respectfully submitted that Diepstraten neither discloses nor suggests “prioritiz[ing] said communications packets for transmission based on” “the total number of packets transmitted to each mobile unit” and “the order in which packets were received by the access point,” as recited in claim 24. Accordingly, it is respectfully submitted that claim 24 is allowable and the Examiner should withdraw the 35 U.S.C. § 102(b) rejection for this claim.

Claim 25 recites “prioritizing said communications packets for transmission based on” “the total number of packets transmitted to each mobile unit” and “the order in which the packets were received by the access point.” Thus, it is respectfully submitted that claim 25 is also allowable for at least the reasons discussed above with reference to claim 24.

Claim 26 recites a transmitter being configured to “prioritize said communications packets for transmission based on” “the total number of packets transmitted to each receiver” and “the order in which the packets were received by the transmitter.” Thus, it is respectfully submitted that claim 26 is also allowable for at least the reasons discussed above with reference to claim 24. Because claims 27-29 depend from and, therefore, include all the limitations of claim 26, it is respectfully submitted that these claims are also allowable.

Claim 32 recites “prioritizing said communications packets for transmission based on” “the total number of packets transmitted to each mobile unit” and “the order in which the packets were received by the access point.” Thus, it is respectfully submitted that this claim is also allowable for at least the reasons discussed above with reference to claim 24. Because claims 33-35 depend from and, therefore, include all the limitations of claim 26, it is respectfully submitted that these claims are also allowable.

### CONCLUSION

In light of the foregoing, Applicants respectfully submit that all of the now pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Dated:

2/3/08

Respectfully submitted,

By: 

Oleg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP  
150 Broadway, Suite 702  
New York, NY 10038  
(212) 619-6000 (phone)  
(212) 619-0276 / 208-6814 (fax)